

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/05-01/13**

Date: **2 September 2016**

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul Pangalangan

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**IN THE CASE OF
THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO, AIMÉ KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE BABALA
WANDU AND NARCISSE ARIDO**

Public

**Public Redacted Version of ‘Narcisse Arido’s Request that Trial Chamber VII Admit
CAR-OTP-0094-1580-R01 into Evidence’,
filed on 14 August 2016 (ICC-01/05-01/13-1968-Conf)**

Source: Counsel for Narcisse Arido

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

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I. INTRODUCTION

1. On 25 July 2016 the Prosecution disclosed to the Arido Defence item CAR-OTP-0094-1580-R01 pursuant to Rule 77 of the Rules of Procedure and Evidence. In its e-mail, the Prosecution noted the potentially exculpatory nature of the material.¹

2. This [REDACTED] language document concerns the representations made by witness D6 as regards [REDACTED]. No member of Mr. Arido's defence is a fluent [REDACTED] speaker; however, the presence of names and the translation of various keywords suggested that the document concerned witness D6 discussing Central African Republic ('CAR') military matters with [REDACTED].

3. At that point, the Arido Defence brought the item to the attention of Trial Chamber VII ('Trial Chamber') noting² that it had requested a translation and "may request the Chamber to consider this material if it turns out to be relevant". The translation of the item was received on 5 August 2016. A courtesy copy³ of the translated item was sent on 8 August 2016 and the item was formally disclosed on 9 August 2016 as CAR-D24-0005-0056

4. The Defence hereby requests that the item be formally added to its list of evidence and submitted pursuant to Article 69(3) of the Statute for consideration in the Trial Chamber's judgement as the item contains exculpatory sections.

II. CONFIDENTIALITY

5. Pursuant to Regulation 23*bis* of the Regulations of the Court ('RoC') and Regulation 24 of the Regulations of the Registry ('RoR'), this request is submitted as confidential as it refers to an asylum claim of a protected witness, which is confidential. A public redacted version will be shortly filed.

III. APPLICABLE LAW

6. Regulation 35(2) of the Regulations of the Court states that "After the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can

¹ Email of 25 July 2016, subject '160725 CAR ART 70 - Prosecution disclosure - Trial Rule 77 package 50' ("Please find below the [...] link to access Rule 77 package 50, it may contain potentially exculpatory information, which is being disclosed to you").

² Email of 25 July 2016, subject line 'D6 evidence from today's Rule 77 disclosure'.

³ The courtesy copy incorrectly had the item number listed as CAR-D24-0005-0033.

demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control.”

7. Article 69(3) states that the parties “may submit evidence relevant to the case, in accordance with article 64”.

IV. SUBMISSIONS

8. The Arido Defence requests that the Trial Chamber permit the Defence to formally to add item CAR-OTP-0094-1580-R01 to its list of evidence and requests the Trial Chamber to admit this item.

9. The Arido Defence is making this request for the document to be accepted into evidence, without prejudice to its prior legal arguments in relation to D6. The Arido Defence maintains that D6 is not a “witness” within the legal definition required for Article 70 offences⁴ and that the allegations in respect to D6 should be dismissed.⁵ However, if the Trial Chamber disagrees, then the Arido Defence urges the Trial Chamber to consider the reasonable doubt raised through this evidence, as it deliberates for its Judgment.

A. Extension of time-limits

10. The Arido Defence requests an extension of the time-limit for its request to have the item added to its list of evidence and submission through Article 69(3) pursuant to Regulation 35(2) of the Regulations of the Court as it was unable to file this application within the time limit for reasons outside its control.

11. The Defence notes that the chain of custody on the item indicates that it was in the possession of the Prosecution on 31 May 2016. Given its obvious relevance to the charges – which the Defence argues are exculpatory and which was broadly conceded by the Prosecution,⁶ the Arido Defence notes the late Prosecution disclosure which has not been explained. It bears re-stating that the Arido Defence was not made aware of the existence of this document until 25 July 2016 and was unable to fully comprehend its contents until 5 August 2016.

12. Though in the context of re-consideration, The Trial Chamber has previously and exceptionally considered Defence arguments following the closing of submissions and evidence

⁴ ICC-01/05-01/13-1904-Conf-Corr, paras 156-161.

⁵ *Ibid.*, paras 162-170.I aII

⁶ See footnote 1 above.

where “none of the parties knew of the existence of the [material relevant to the request] and this was not due to any lack of diligence”.⁷ The Prosecution’s knowledge notwithstanding, the Arido Defence submits that the same reasoning applies to the present circumstances.

B. Admission of evidence

13. The item concerns D6’s representations to [REDACTED] concerning [REDACTED]. These centre around [REDACTED].⁸ The item is relevant, admissible, authentic, probative, and causes no prejudice to the other parties.

14. The item is exculpatory, relevant, and probative because (a) it suggests that D6 had a military background, and (b) suggests that Mr. Arido did not recruit him. These are all disputed issues that underlie the charges against Mr. Arido. D6 did not testify, thus a record of an interview with him is probative as it gives detail about an individual which had not yet come to light and has not been discussed at trial.

15. Firstly, if D6 had a military background, then it makes it less likely that Mr. Arido would need to coach him about military matters and events as alleged. The item is relevant because it does just this. D6’s explanation for [REDACTED] is [REDACTED].⁹ He explains that he was in the military,¹⁰ trained for work with [REDACTED],¹¹ and ultimately became [REDACTED].¹² He summarises his view of why Mr. Bemba is innocent.¹³

16. Secondly, D6 explains that Mr. Bemba’s lawyer contacted him.¹⁴ This statement is relevant as it does not provide any indication of the involvement of Mr. Arido. While the conclusions drawn from this should not go too far beyond the allegations involving D6 – it could be seen to undermine the role of Mr. Arido recruiting witnesses more generally.

17. As a document obtained by the Prosecution from [REDACTED], the reliability of this document is extremely high. It appears to have all the indicia of authenticity – signatures and document letter-head. .

⁷ ICC-01/05-01/13-1948, para. 25; *see also* para. 22 where the Trial Chamber considered it in the interests of justice to consider the request.

⁸ CAR-OTP-0094-1580-R01 at 1599 (CAR-D24-0005-0056 at 0079).

⁹ *Ibid.*, at 1597 (CAR-D24-0005-0056 at 0077).

¹⁰ *Ibid.*, and at 1589 (CAR-D24-0005-0056 at 0078).

¹¹ CAR-OTP-0094-1580-R01 at 1597 (CAR-D24-0005-0056 at 0077).

¹² *Ibid.*

¹³ *Ibid.*, at 1599 (CAR-D24-0005-0056 at 0079).

¹⁴ *Ibid.*, at 1599 (CAR-D24-0005-0056 at 0080).

V. CONCLUSION

18. In light of the above, the Arido Defence respectfully requests Trial Chamber VII to:

- a. Extend the time-limit for the addition of item to the Arido Defence list of evidence and the submission of the item CAR-OTP-0094-1580-R01 pursuant to Article 64(3); and
- b. Admit CAR-OTP-0094-1580-R01 pursuant to Article 69(3) and (4).



Chief Charles Achaleke Taku, Counsel for Mr. Arido

Dated this 2nd Day of September 2016

Nairobi, Kenya